



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121126649-3347-02]

RIN 0648-BC79

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Emergency Action Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extended.

SUMMARY: Pursuant to its emergency authority, NMFS extends and revises an emergency action that temporarily suspended and modified monkfish landing limits for vessels issued a Federal limited access monkfish Category C or D fishing under a Northeast multispecies day-at-sea, or both a Northeast multispecies and monkfish day-at-sea, in the monkfish Northern Fishery Management Area. This action is necessary to help mitigate expected adverse economic and social harm resulting from substantial reductions to the 2013 annual catch limits for several stocks managed under the Northeast Multispecies Fishery Management Plan. The intent is to provide additional fishing opportunities for vessels affected by recent reductions to Northeast multispecies annual catch limits, without resulting in overfishing monkfish within the Northern or Southern Fishery Management Areas.

DATES: The effective date of the emergency temporary rule published April 30, 2013, beginning at 78 FR 25214 is extended through April 30, 2014. The amendments to §648.94 (b)(3)(i) and (b)(3)(iv) are effective at 0001 hr on October 28, 2013, through April 30, 2014.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA) prepared for this action are available from John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276, or at the following internet address:

<http://www.nero.noaa.gov/regs/2013/April/13monkeia.html>. Copies of the small entity compliance guide are available at the following internet address:

<http://www.nero.noaa.gov/nr/2013/April/13monkcatcdnolimitnfmaphl.pdf>.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (NEFMC) substantially reduced the 2013 annual catch limit (ACL) for several Northeast (NE) multispecies (groundfish) stocks as part of Framework Adjustment 50 to the NE Multispecies Fishery Management Plan (FMP) (78 FR 26172; May 3, 2013). That action was necessary to prevent overfishing and rebuild overfished groundfish stocks consistent with rebuilding plans required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These reductions are expected to result in substantial adverse economic impacts to vessels participating in the groundfish fishery, particularly for those vessels enrolled in the groundfish sector program,

which allocates a share of the available ACL of each stock to collectives of vessels known as “sectors.” In anticipation of such impacts, at its November 2012 meeting the NEFMC requested that NMFS implement an emergency action to eliminate monkfish trip (landing) limits for vessels issued a limited access permit fishing under a groundfish sector on a groundfish day-at-sea (DAS) in the monkfish Northern Fishery Management Area (NFMA). This request was intended to increase fishing opportunities and associated fishing revenue to help mitigate the adverse impacts to vessels and fishing communities affected by reductions to groundfish ACLs in fishing year (FY) 2013.

NMFS developed a proposed rule to implement emergency measures in the monkfish fishery based on the NEFMC request for emergency action and published a proposed rule justifying emergency action according to agency guidelines (62 FR 44421; August 21, 1997) in the Federal Register on February 25, 2013 (78 FR 12708). The proposed rule would have temporarily suspended the monkfish landing limits for any vessel issued a Federal limited access monkfish Category C or D permit (i.e., a vessel that is also issued a limited access NE multispecies permit) that is fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA during FY 2013. A full discussion of the background and justification for emergency measures was presented in the preamble to the February 25, 2013, proposed rule and section 2.1 of the EA prepared for that action (see ADDRESSES), and is not repeated here. In summary, the combined effect of several issues facing the Northeast multispecies (groundfish) fishery in FY 2013, including substantial reductions in ACLs for several stocks, present recently discovered circumstances that would likely cause serious management problems and result in substantial economic and social harm for the groundfish and monkfish fisheries and associated communities.

Based on additional analysis and an evaluation of public comment, we revised the proposed measures through an emergency interim final rule that published in the Federal Register on April 30, 2013 (78 FR 25214). The interim final rule implemented revised emergency measures suspending monkfish landing limits for Category C or D monkfish vessels fishing under a monkfish, but not a groundfish, DAS in the NFMA during FY 2013. These measures were more restrictive than what we proposed in an attempt to address concerns expressed by the Mid-Atlantic Fishery Management Council (MAFMC) and industry that the proposed measures may unintentionally shift effort into the Southern Fishery Management Area (SFMA) and cause unanticipated adverse impacts to the SFMA monkfish resource and associated fishing communities. The measures in the interim final rule represented a compromise between the interests expressed by each Council by providing additional opportunities to land monkfish in the NFMA, as advocated by the NEFMC, yet also minimizing the potential effort shifts into the SFMA, as advocated by the MAFMC. Additional public comments were accepted on the revised measures through May 30, 2013, and are addressed later in this preamble. The interim final rule indicated that we would monitor the fishery, and that we may renew or modify the emergency measures for the remainder of FY 2013, consistent with the Magnuson-Stevens Act and the Administrative Procedure Act (APA).

Pursuant to section 305(c)(3)(B) of the Magnuson-Stevens Act, management measures implemented by the April 30, 2013, emergency interim final rule may be extended for an additional period of up to 186 days, provided (1) the public has had the opportunity to comment on the emergency regulations, and (2) if the emergency is requested by a fishery management council, the council is actively preparing an action to address the emergency on a permanent basis. As noted above, the public has had two opportunities to comment on the emergency

management measures. Further, the NEFMC is preparing Framework Adjustment 8 to the Monkfish FMP that is considering increasing the monkfish landing limits applicable to vessels fishing under a groundfish, but not a monkfish, DAS in the NFMA starting in FY 2014. This measure would increase fishing opportunities and associated revenue for vessels in the groundfish fishery. Therefore, both criteria specified in the Magnuson-Stevens Act necessary to extend the emergency action have been met. Based on public comments and a consideration of new information and data describing the performance of the monkfish and groundfish fisheries during the first 4 months of FY 2013 (May-August), this temporary rule extends and revises the measures implemented by the April 30, 2013, interim final rule for the remainder of FY 2013 (through April 30, 2014).

Management Measures Implemented by this Temporary Rule

1. Monkfish Landing Limits in the NFMA

This temporary rule extends and revises the April 30, 2013, emergency action that suspended and modified monkfish landing limits for vessels issued a Federal limited access monkfish Category C or D permit that are fishing under a groundfish DAS or both a groundfish and monkfish DAS in the monkfish NFMA for the remainder of FY 2013. Existing monkfish landing limits for vessels issued a Federal limited access monkfish Category A or B permit and fishing under a monkfish DAS, or vessels issued an open access monkfish Category E permit that are not operating under any DAS (i.e., vessels that catch monkfish while targeting other fisheries) remain the same, as specified in Table 1. In addition, the overfishing level (OFL), acceptable biological catch level (ABC), ACL, annual catch target (ACT), and total allowable landing (TAL) amounts remain 19,557 mt, 7,592 mt, 7,592 mt, 6,567 mt, and 5,854 mt,

respectively, as implemented in either Amendment 5 (76 FR 30265; May 25, 2011) or Framework Adjustment 7 to the Monkfish FMP (76 FR 66192; October 26, 2011).

Table 1. Summary of Monkfish Possession Limits in the NFMA for 2013.

Groundfish Sector Participation Status	DAS Type	Monkfish Permit Category	Landing Limit (tail weight)
Non-sector Vessels (Monkfish-only or Common Pool Groundfish Vessels)	No DAS	A, B, or E	Up to 5% of total weight of fish onboard; or 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip based on gear used
	Monk	A	1,250 lb (567 kg)/DAS
		B	600 lb (272 kg)/DAS
	NE Mults A DAS only	E	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg)
		C or D	Unlimited
	NE Mults A & Monk DAS	C or D	Unlimited
Sector	Non-DAS	E, C, or D	Up to 5% of total weight of fish onboard; or 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip based on gear used
	NE Mults A DAS only	E	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg)
		C or D	Unlimited
	NE Mults A & Monk DAS	C or D	Unlimited

New information and data describing the performance of the monkfish fishery during May-August 2013 (completed landings data for September are not available at this time) indicate that monkfish landings in both the NFMA and SFMA remain slightly below the monkfish landing trajectory observed in both areas during FY 2012. During May–August 2013, monkfish landings in the NFMA have decreased by about 3 percent relative to the same months in FY 2012, while SFMA monkfish landings have decreased by 25 percent. Further, monkfish DAS usage has decreased by 9 percent in the NFMA and 12 percent in the SFMA compared to May – August 2012. Forty more trips have been taken under both a groundfish and a monkfish DAS in the NFMA compared to FY 2012 (a 35-percent increase), while fewer monkfish trips were taken

in the SFMA (36 percent fewer groundfish/monkfish DAS trips and 5 percent fewer monkfish-only DAS trips). However, it is unclear whether this represents an actual shift in behavior caused by the emergency measures, or inter-annual fluctuation in vessel operations. If the recently observed trends in monkfish landings and operations continue, 2013 monkfish landings will fall well short of the 2013 TALs in both the NFMA and SFMA, similar to what has been observed since FY 2011 when these TALs were first implemented (see Table 2).

Table 2. Recent Performance of the Monkfish Fishery Relative to the NFMA and SFMA TALs.

Fishing Year	NFMA				SFMA			
	May-August Landings		Annual Landings		May-August Landings		Annual Landings	
	mt	% of TAL	mt	% of TAL	mt	% of TAL	mt	% of TAL
2011	904	15%	3,699	63%	2,085	23%	5,801	65%
2012	1,099	19%	3,920	67%	2,637	30%	5,184	58%
2013	1,065	18%	-	-	1,965	22%	-	-

As discussed more thoroughly in the April 30, 2013, interim final rule for this emergency action, the MAFMC and some industry participants were concerned that the originally proposed emergency measures could substantially increase the effective effort on monkfish by inadvertently and unintentionally creating incentives for vessels to fish for monkfish using readily available groundfish DAS in the NFMA, and then using their allocated monkfish DAS to fish for monkfish in the SFMA. This would reflect a substantial change from recent fishing practices. At the time, we shared their concern that this could result in monkfish landings that exceed the SFMA monkfish TAL during FY 2013 and result in harm to the SFMA monkfish stock and associated fishery. However, current trends in the fishery suggest that the measures implemented by the interim final rule did not result in a significant increase in monkfish landings relative to 2012, and that it appears that 2013 landings will continue to track well below the TALs in the NFMA and SFMA for the rest of the year.

While the potential remains for the measures implemented by this temporary rule to increase monkfish landings and cause effort to shift into the SFMA, monkfish landings would have to increase substantially during the remainder of FY 2013 (i.e., through April 30, 2014) to exceed the FY 2013 monkfish TALs. Based on the recent performance of the monkfish fishery in both areas, there is a low probability that any potential landings increases or effort shifts would be substantial enough to increase monkfish catch such that the FY 2013 NFMA or SFMA monkfish TAL, ACL, or OFL would be exceeded. Because neither the NFMA nor SFMA monkfish stocks are currently overfished, overfishing levels are substantially higher than the TALs for each stock, and biomass is well above the current biomass thresholds; any shift of effort caused by these emergency measures is not likely to result in overfishing either stock, or cause any biological harm to these stocks during the remainder of FY 2013. We still retain the ability to reinstate monkfish landing limits in the NFMA at any time during the remainder of FY 2013, thereby preventing the emergency measures from further influencing potential shifts in vessel operations.

Suspending monkfish landing limits for Category C or D monkfish vessels fishing on a groundfish DAS or both a groundfish and monkfish DAS in the NFMA for the remainder of FY 2013 offers additional opportunities to land monkfish and increase the likelihood that additional monkfish would be landed from the NFMA. This may help mitigate negative impacts to vessels affected by recent reductions in groundfish ACLs—the main purpose of this action. Any effort shift that may result from this action would be temporary in nature, and may actually increase the likelihood that the fishery would more fully harvest the available TAL. In doing so, the fishery may better optimize yield and maximize economic benefits to the various fishing sectors consistent with Objective 2 of the Monkfish FMP.

2. Regional Administrator Authority to Reinstate Existing Monkfish Possession Limits

This action authorizes the Regional Administrator to reinstate existing monkfish landing limits for limited access monkfish Category C and D vessels fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA at any time through April 30, 2014, if available data indicate that the NFMA monkfish TAL or ACT may be exceeded during FY 2013. If such landing limits are reinstated, monkfish Category C and D vessels fishing in the NFMA under a monkfish DAS would be subject to monkfish landing limits of 1,250 lb (567 kg) tail weight and 600 lb (272 kg) tail weight per DAS, respectively, for the remainder of FY 2013, while vessels fishing under a groundfish DAS would be subject to monkfish landing limits of up to 25 percent of the total weight of fish on board, not to exceed 300 lb (136 kg) tail weight per DAS. This discretion is necessary to ensure that unexpected changes in fishing behavior in response to this emergency action do not cause monkfish landings or catch, when discards are included, to exceed the FY 2013 NFMA monkfish TAL or ACT, respectively, and result in overfishing for NFMA monkfish. Any reinstatement of monkfish possession limits in the NFMA would be implemented consistent with the APA.

Comments and Responses

Fifteen comments were received during the public comment period on the interim final rule from eight individuals, three commercial fishing organizations, two fish dealers, the NEFMC, and the MAFMC. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. Overall, 4 commenters supported the proposed action, while 11 opposed it.

Comment 1: One commenter suggested that the interim final rule was politically motivated rather than influenced by science, stating that there is no proof that there are sufficient

economic reasons for taking emergency action. This commenter also objected to responses to public comments in the interim final rule that seemed to dismiss scientific references and input from the general public and independent and non-governmental sources.

Response: As noted above, Framework Adjustment 50 to the NE Multispecies FMP implemented necessary reductions in the FY 2013 groundfish ACLs to end overfishing and rebuild overfished stocks based on the best available scientific information regarding the status of groundfish stocks. The likely economic impacts resulting from such reductions are also well documented in the EA prepared for that action, and available at the following internet link: <http://www.nero.noaa.gov/regs/2013/April/13mulfw50ifrea.pdf>. The purpose and need for this action—to help mitigate the social and economic impacts associated with such drastic reductions to groundfish ACLs in FY 2013—is well documented in the February 25, 2013, proposed rule for this action and in section 2.1.2 of the associated EA (see ADDRESSES). Thus, this emergency action is not politically motivated, but rather based on a documented need to help mitigate expected economic impacts resulting from scientifically derived reductions to groundfish ACLs.

The commenter appeared to object to how we responded to Comment 4 in the April 30, 2013, interim final rule for this action. As noted in the response to that comment, we must rely on the best available scientific information, as required by National Standard 2 of the Magnuson-Stevens Act, and cannot rely upon draft reports, news articles, personal communications, or information that is not germane to the proposed action as the basis for such measures. The information presented by the previous commenter was neither specific to the area affected by this action, nor the fishery for which it pertained. It was difficult to relate such input to the proposed monkfish emergency action, and refute other scientific information that was more germane to the proposed emergency action or the review by individuals with an intimate knowledge of the

monkfish fishery and its impacts on marine mammals. Thus, we did not ignore or dismiss input from the public or non-governmental entities, but rather relied on what we considered to be the best scientific information available to make our determinations related to this action, as required by law.

Comment 2: One vessel owner that operates within the NFMA commented that we have ignored Council votes recently by not implementing NEFMC recommendations for emergency action. In contrast, an industry group representing monkfish vessels operating in the SFMA indicated that the measures implemented by the interim final rule responded directly to concerns raised by the public about the original NEFMC proposal for emergency action.

Response: We take input by the public, including both Councils, very seriously, and consider such input when making decisions about management actions. While we may or may not agree with input offered by any one individual or group, our decisions must be justified based on the best scientific information available at the time of the decision, as noted above in the response to Comment 1, and consistent with applicable law. As discussed more thoroughly above, new information and data regarding the performance of the monkfish fishery during May–August 2013 suggests that we can suspend monkfish landing limits for vessels issued a limited access monkfish Category C or D permit that are fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA for the rest of FY 2013 with minimal risk of overfishing monkfish stocks in either the NFMA or SFMA, or causing any biological harm to these stocks. In making this determination, we have utilized the best available scientific information to balance the concerns and interests of the public, including the NEFMC and vessels operating in the NFMA, and the MAFMC and vessels operating in the SFMA. Such data suggest that even if the measures implemented by this temporary rule provide incentives to shift

effort into the SFMA, as indicated by the MAFMC and other commenters, monkfish catch would not likely increase sufficiently to cause the FY 2013 SFMA monkfish TAL, ACL, or OFL to be exceeded. In the development of the interim final rule, we exercised caution in considering public comment and analyzing available data regarding the potential for effort shifts into the SFMA and its impacts on the monkfish resource, because we did not yet know how the fishery would react to the substantial reductions in groundfish ACLs or the emergency monkfish measures. Now that we have new information detailing how the fishery has reacted to date, we can make a more informed decision about the potential for such effort shifts to adversely affect the monkfish resource for the remainder of FY 2013. Thus, we have considered public input and available information to justify measures implemented in this temporary rule consistent with applicable law.

Comment 3: Three vessel owners and two fish dealers indicated that the measures implemented by the interim final rule will do little to increase monkfish landings in the NFMA, leaving the NFMA monkfish ACL to be under-harvested during FY 2013.

Response: When we analyzed the measures implemented by the interim final rule, the results of the analysis suggested that monkfish landings in the NFMA would increase. However, we also acknowledged that there were many factors influencing vessel behavior, and that there was a lot of uncertainty inherent in how the fishery would react to the reductions in groundfish ACLs and any monkfish emergency measures. The new data regarding the current performance of the monkfish fishery so far during FY 2013 suggest that the measures implemented by the interim final rule did not increase monkfish landings significantly relative to FY 2012, and that if recently observed landing rates continue, the fishery will once again under-harvest the NFMA monkfish TAL and ACL during FY 2013. Accordingly, based upon this new information, we

are extending, but also revising the emergency action to be consistent with the initially proposed emergency action by suspending the monkfish landing limits for limited access monkfish Category C or D vessels fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA for the rest of FY 2013 through this temporary rule. We expect this will help further increase monkfish landings and mitigate the adverse economic impacts of reduced groundfish ACLs, as intended.

Comment 4: The NEFMC submitted a revised request for emergency action that was adopted at its April 2013 meeting. The revised request recommended that NMFS increase the monkfish landing limits for vessels fishing on a groundfish DAS in the NFMA to equal the landing limits specified for vessels fishing on a monkfish DAS in the NFMA during FY 2012 (600 lb (272 kg) tail weight per DAS for Category D vessels and 1,250 lb (567 kg) tail weight per DAS for Category C vessels) instead of completely eliminating these landing limits, as they originally requested. Nine other commenters supported the NEFMC's revised emergency action request, stating that it is necessary to increase monkfish landings and help reduce the substantial adverse economic impacts resulting from reductions in groundfish ACLs. The NEFMC and two other commenters noted that the monkfish incidental landing limit for vessels fishing on a groundfish DAS constrains the ability of the fishery to fully harvest the available NFMA monkfish TAL, with one commercial fishing organization noting that vessels were also constrained by an insufficient allocation of monkfish DAS to account for monkfish overages while fishing on groundfish DAS. That organization also highlighted that the revised emergency action request would reduce monkfish discards.

Response: We appreciate that the NEFMC's revised proposal attempted to address our concerns with their original proposal. However, as noted in the analysis prepared for this action,

the FY 2012 monkfish landing limits under a monkfish DAS did not substantively limit the existing fishery, and were, therefore, not very different from eliminating monkfish landing limits entirely. The analysis prepared for this emergency action confirms that vessels are somewhat constrained by incidental monkfish landing limits when fishing on a groundfish DAS. Therefore, in conjunction with new information regarding the performance of the fishery that reduces our concern that the emergency measures would result in negative impacts to the monkfish stock, we are extending, but also revising the emergency action to be consistent with the initially proposed emergency action by suspending monkfish landing limits for limited access vessels fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA for the rest of FY 2013 through this temporary rule. This will eliminate monkfish landing limit constraints for monkfish Category C or D vessels fishing on a groundfish DAS, and should increase the fishery's capacity to land more monkfish from the NFMA, and reduce unnecessary monkfish discards. We acknowledge that this is not consistent with the NEFMC's revised recommendation for emergency action, but note that this is consistent with their original emergency action request, and should achieve the same or better results than their revised request.

Recent DAS usage patterns suggest that the fishery in general is not restricted by an insufficient number of monkfish DAS. On a yearly basis, only about 16 percent of allocated monkfish DAS are used in both areas combined, and only about 5 percent of allocated monkfish DAS have been used in the NFMA during recent years. While DAS allocations may be constraining for individual vessels, it does not appear that monkfish DAS allocations are the primary reason for low monkfish landings from the NFMA fishery at large. The NEFMC is

considering adjustments to both monkfish DAS allocations and landing limits as part of Framework Adjustment 8 to the Monkfish FMP for implementation during FY 2014.

Comment 5: Two dealers and one vessel owner observe that both stocks of monkfish are rebuilt and not subject to overfishing. One commercial fishing organization and a vessel owner noted that the monkfish ACT is set conservatively below the ABC and OFL. Further, the NEFMC and four other commenters also recalled that because the monkfish fishery has not come close to exceeding TALs in either the NFMA or the SFMA in 2012, more monkfish could be landed without exceeding the TALs, allowing the fishery to more closely achieve optimum yield (OY). One dealer stated that we need to keep a steady supply of fish available to the markets. One commercial fishing organization supported increasing access to monkfish in a manner that provides greater flexibility in planning trips, while still retaining quotas that would minimize the risk of overfishing.

Response: We agree that the latest monkfish stock assessment information available (Stock Assessment Workshop 50) indicates that both monkfish stocks are not overfished or subject to overfishing. We also recognize that there are sufficient buffers between the TAL and the ACL and OFL for each stock to prevent overfishing even if the FY 2013 TAL is fully harvested. As analyzed in the EA prepared to support this action, neither the measures implemented by the interim final rule, nor the measures implemented by this temporary rule (identified as Alternatives 1 and 2 in the EA, respectively), are expected to result in landings exceeding the FY 2013 NFMA monkfish TAL based on recent fishing operations and other existing constraints in either the groundfish or monkfish fisheries. In fact, based on new evidence that the fishery is currently on track to land less than the monkfish TALs in each area during FY 2013, there is little risk that excessive amounts of monkfish will be landed as a result

of measures implemented by this temporary rule that could jeopardize the health of either stock. Therefore, we agree that more monkfish can be landed from each area during the remainder of FY 2013 to better achieve OY in the fishery, without resulting in overfishing or biological harm to either monkfish stock. This should also help increase the potential for a more steady supply of monkfish to the markets. The NFMA and SFMA monkfish catch limits are not revised by this temporary rule, and would continue to serve to minimize the risk of overfishing, as implemented under Framework Adjustment 7 and Amendment 5 to the Monkfish FMP. We will continue to monitor monkfish landings throughout FY 2013, and will reinstate existing monkfish landing limits if available data suggest that the FY 2013 NFMA monkfish TAL would be exceeded before the end of the FY to further ensure that overfishing does not occur during FY 2013.

Comment 6: One commercial vessel owner completely opposed the interim final rule and the NEFMC revised request for emergency action, stating that he is opposed to allowing the use of a groundfish DAS to target monkfish. The MAFMC reiterated its concerns that the NEFMC emergency action requests could potentially shift effort into the SFMA, posing a considerable risk to monkfish stocks in both the NFMA and SFMA. A commercial fishing organization warned that drastic increases in fishing effort on monkfish may have substantial and unintended consequences that may lead to depleted stocks, recommending that monkfish landings should be closely monitored to ensure catch levels are not exceeded. This organization, one vessel owner, and the MAFMC indicated that efforts to rebuild groundfish and minimize adverse economic impacts to the groundfish fishery should not risk depleting or jeopardize the health of another species such as monkfish. The MAFMC also recommended allowing the NFMA monkfish fishery to adjust to the interim final rule measures and reevaluate their efficacy after 6 months. The NEFMC and two other commenters noted that the potential effort shift into

the SFMA is not a substantial concern. They observed that, historically, most vessels do not use their full monkfish DAS allocations in the NFMA because it is not profitable to do so, and that the monkfish landing limits would make it even less profitable to fish their monkfish DAS in the SFMA, particularly for trawl vessels.

Response: As noted in the interim final rule, we agree with the MAFMC that the NEFMC emergency action requests increase the potential for effort to shift into the SFMA. However, we also agree with the NEFMC, and recognize that SFMA monkfish landing limits may make it less profitable for monkfish vessels to shift effort into the SFMA. As indicated in the interim final rule for this action and recommended by the MAFMC, we have reevaluated the impacts of the interim final rule measures now that the fishery in the NFMA has had an opportunity to adjust to such measures. New data regarding the performance of the fishery during May-August 2013 suggest that there is little risk that potential effort shifts into the SFMA will adversely affect the monkfish resource. Therefore, to provide some economic relief to groundfish vessels without harming the monkfish stocks in either the NFMA or SFMA, we have implemented the original NEFMC request for emergency action through the remainder of FY 2013 through this temporary rule. We will continue to closely monitor monkfish landings and vessel activity using all available data. If the data suggest that the NFMA monkfish TAL will be exceeded, or that effort displacement into the SFMA area is occurring that could result in excessive monkfish catch, we can reinstate existing monkfish incidental landing limits for vessels fishing on a groundfish or both a groundfish and monkfish DAS to minimize incentives to shift effort into the SFMA.

Vessels will still be subject to existing regulations in other fisheries, including effort controls such as DAS, possession and landing limits, minimum mesh size requirements, and hard

quotas and area closures, to ensure that ACLs are not exceeded and that overfishing does not occur on any species, as required by the Magnuson-Stevens Act. Therefore, the measures implemented by this temporary rule, in addition to existing measures in other fisheries, should ensure that other species are not depleted as a result of this action.

Comment 7: One vessel owner questioned why groundfish vessels would need to catch an unlimited amount of monkfish, when existing NFMA monkfish landing limits while operating under a monkfish DAS is a substantial amount of fish already. He noted that if the fishery is under-harvesting monkfish, then everyone should be allowed to land more monkfish, not just groundfish vessels. He implies that groundfish vessels expect to have greater access to the resource because they operate larger vessels than he does, even though they are also likely issued the same monkfish permits.

Response: The purpose of this emergency action is to help mitigate adverse economic impacts to the groundfish fishery as a result of substantial and unexpected reductions to FY 2013 groundfish ACLs. In contrast, the monkfish catch limits have increased since FY 2007, and have been the same since FY 2011. The monkfish fishery has under-harvested available TALs in both areas for the past several years. Both Councils are currently working on measures that would help increase monkfish landings in the directed monkfish fishery in both areas. These measures may be in place as early as May 2014 as part of Framework Adjustment 8 to the Monkfish FMP. Implementing such measures through this emergency action is not warranted, as no emergency situation exists in the monkfish fishery similar to that currently being experienced in the groundfish fishery. The analysis prepared for this action indicates that monkfish incidental landing limits when fishing on a groundfish DAS constrain catch for such vessels. Because the measures implemented by the interim final rule did not appear to create sufficient incentives for

vessels to increase monkfish landings by fishing under a monkfish DAS, additional action was necessary through this temporary rule to fulfill the purpose of this action. Finally, measures implemented by this interim final rule apply to all monkfish Category C or D vessels, regardless of size. Accordingly, there should be no differential impact to vessels of different size classes from such measures.

Comment 8: One vessel owner indicated that a majority of monkfish DAS are not being used now. He states that this is likely as an indication that vessels cannot harvest sufficient quantities of monkfish because the stock is not as healthy as previously thought.

Response: According to the latest monkfish stock assessment, monkfish, both stocks are neither overfished, nor subject to overfishing. According to both SAW 50 and data from the April 2013 monkfish stock assessment presented to the Council's Scientific and Statistical Committee, both stocks are well above their biomass thresholds, with NFMA monkfish biomass estimated to be very close to the target biomass level (46,074 mt), while the SFMA monkfish biomass was estimated to be about double the current target biomass level (71,667 mt). In fact, biomass in the NFMA has been increasing since 2006, suggesting the stock condition is improving. Therefore, although monkfish DAS are not being fully used, particularly in the NFMA, that does not appear to be directly linked with health of the stock, and may be influenced by a number of other factors such as changes to management measures, price of fuel, demographic patterns, etc.

Changes from the April 30, 2013, Emergency Interim Final Rule

In extending the emergency interim final rule, NMFS has made two changes to the proposed rule, including changes as a result of public comment. In § 648.94, this rule suspends paragraph (b)(3)(i), and adds the paragraph (b)(3)(iv) to exempt monkfish Category C and D

vessels from existing monkfish landing limits when fishing under a groundfish DAS in the NFMA as part of this temporary rule. Both of these changes are consistent with the initial proposed emergency measures.

Classification

The NMFS Assistant Administrator has determined that the emergency measures implemented by this temporary rule are consistent with the Monkfish FMP, provisions of the Magnuson-Stevens Act, agency guidelines on emergency rules, and other applicable law. NMFS, in making a final determination, has taken into account the data, views, and comments received during the public comment period for the interim final rule.

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

This interim final rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Relevant analyses and determinations required by the Regulatory Flexibility Act were summarized in the classification section of both the February 25, 2013, proposed rule and the April 30, 2013, emergency interim final rule, and are not repeated here. All relevant comments in response to the IRFA were summarized and addressed in the Classification section of the April 30, 2013, interim final rule for this action. No new issues related to the IRFA or FRFA were raised during the public comment period for the interim final rule. Economic impacts of the measures implemented by this temporary rule are outlined as Alternative 2 in section 5.2.3 of the EA prepared for this action (see ADDRESSES), and summarized in the IRFA prepared for the February 25, 2013, proposed rule for this action. Because this temporary rule does not impose any costs, and suspends monkfish landing limits for certain vessels, no adverse economic

impacts are expected from this action and that vessel revenue is expected to increase as a result of measures implemented by this temporary rule.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (June 20, 2013; 78 FR 37398). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20 final rule, a FRFA was developed for this action using SBA's former size standards. We have reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, 277 entities subject to this action were considered small entities, while 26 were considered large entities in FY 2011 (the latest year for which complete data are available), as described in Section 7.11.2 of the EA prepared for this action (see ADDRESSES) and the FRFA prepared for the April 30, 2013, interim final rule. Under the new standards, all entities would be considered small, as mean gross sales for any one entity never exceeded the \$19 million standard for finfish operations in FY 2011. Because this emergency action does not impose any costs on affected entities, there are no disproportionate impacts between small and large entities associated with this action, and a no small entities would be placed at a significant competitive disadvantage compared to large entities. Eliminating monkfish landing limits for affected vessels would increase, rather than decrease, profitability during FY 2013, helping small entities remain in business. Vessels would be able to capitalize on additional catch of monkfish that would have previously been discarded if exceeding the existing possession restrictions and gain efficiency by retaining such monkfish without incurring additional operational expenses.

Therefore, NMFS has determined that the new size standards do not affect analyses prepared for this action.

An EA was prepared for this emergency action, with impacts for the measures implemented by this temporary rule described under Alternative 2 throughout the document. Because the EA evaluated impacts of alternatives over the duration of FY 2013, and this temporary rule implements Alternative 2 considered in that EA, the impacts of implementing emergency management measures through this temporary rule have already been considered. A copy of the EA and the Finding of No Significant Impact prepared for the emergency action are available from the Regional Administrator (see ADDRESSES).

Because this rule relieves a restriction by suspending the current monkfish possession restrictions for vessels fishing under a groundfish DAS or both a groundfish and monkfish DAS in the NFMA, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Vessels issued a Federal limited access monkfish Category C or D permit fishing in the NFMA under a monkfish DAS would otherwise be subject to a monkfish landing limit of 1,250 lb (567 kg) or 600 lb (272 kg) tail weight per DAS fished, respectively. If fishing under just a groundfish DAS, such vessels would be subject to a monkfish landing limit of up to 25 percent of the total weight of fish on board, not to exceed 300 lb (136 kg) tail weight or its whole weight equivalent per DAS. If monkfish catch exceeds these limits, a vessel must either discard monkfish, or retain legal-sized fish and remain at sea until sufficient time has elapsed to account for the amount of monkfish retained. Alternatively, if the vessel was fishing under a groundfish DAS, it could declare a monkfish DAS at sea and retain the fish, but only if it had first declared the option to potentially use a monkfish DAS via its vessel monitoring system prior to leaving the dock. This action suspends those landing limits to encourage greater monkfish

landings and associated fishing revenue as a means to help alleviate the substantial economic and social impacts expected from substantially reduced groundfish ACLs in FY 2013. Accordingly, implementing this action following a 30-day delayed effectiveness would be contrary to the public interest, because it would unnecessarily delay the public's ability to take advantage of unlimited monkfish landing limits and associated economic benefits of higher monkfish landings, thereby undermining the intent of the rule. A swift implementation of this final action minimizes the chances of negative economic impacts resulting from the reduced groundfish ACLs for some stocks during FY 2013. Thus, there is also good cause under 5 U.S.C. 553(d)(3) to waive the delay in effectiveness for this action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this temporary rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the groundfish and monkfish fisheries. The guide and this temporary rule will be available upon request from the Regional Administrator (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 22, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.94, suspend paragraph (b)(3)(i), and add paragraph (b)(3)(iv) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(3) * * *

(iv) NFMA-- (A) Category C and D vessels. Unless otherwise specified pursuant to paragraph (h) of this section, there is no monkfish landing limit for limited access monkfish

Category C or D vessels that are fishing under a NE multispecies DAS exclusively in the NFMA.

(B) Category F vessels. A limited access monkfish Category F vessel that is fishing under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA is subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(C) Vessels participating in the NE Multispecies Regular B DAS Program. Category C, D, F, G, and H vessels participating in the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

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[FR Doc. 2013-25265 Filed 10/24/2013 at 8:45 am; Publication Date: 10/25/2013]